Lesson Series 66

Universal Periodic Review

Summary

This lesson introduces a means to internationally monitor and assess the human rights situation of United Nation member states, the Universal Periodic Review. As human rights are legally based on United Nations’ principles and treaties, so the evaluation of a state’s commitment and action towards realizing these rights is now based on this system established by the United Nations in 2006.

This lesson will examine the components of the Review, and how it can be made use of by civil society to improve human rights.
Theme: Universal Periodic Review

The Issue

The Universal Periodic Review, established by the United Nations (UN) General Assembly in 2006, is a process through which the human rights records of the UN member states can be reviewed and assessed. It is based upon human rights obligations and commitments expressed in the UN Charter and other international human rights instruments.

The process can be made use of by both states and concerned NGOs, to ensure a better outcome and realization of rights.

The Lessons

Lesson 1 will introduce the Universal Periodic Review mechanism.
Lesson 2 will discuss how best to use the UPR mechanism.
Lesson 1

(This lesson is largely based on information from http://www.upr-info.org/)

A. What is the Universal Periodic Review?

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all 193 UN Member States once every four and a half years. The UPR is a significant innovation of the Human Rights Council which is based on equal treatment for all countries. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of best human rights practices around the globe. Currently, no other mechanism of this kind exists.

The UPR will assess the extent to which States respect their human rights obligations set out in:

- The UN Charter (http://www.un.org/en/documents/charter/index.shtml);
- The Universal Declaration of Human Rights (http://www.ohchr.org/EN/UDHR/Pages/60UDHRIntroduction.aspx);
- Human rights instruments to which the State is party (human rights treaties ratified by the State concerned);
- Voluntary pledges and commitments made by the State (e.g. national human rights policies and/or programmes implemented);
- Applicable international humanitarian law.

History and goals

The UPR was established when the Human Rights Council was created on 15 March 2006 by the UN General Assembly in resolution 60/251. This mandated the Council to “undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States”. On 18 June 2007, the Council agreed to an institution-building package (A/HRC/RES/5/1; ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc), of which a key element was the UPR, that provided a road map guiding its future work. On 17 June 2011, the Human Rights Council (HRC) completed a review of its work and functioning after its first five years of existence, and adopted decision A/HRC/DEC/17/119 (http://www2.ohchr.org/english/bodies/hrcouncil/17session/docs/A-HRC-DEC-17-119.pdf) with regard to the Universal
Periodic Review (UPR). This made some changes to the way the UPR functions, which will take effect as of its second cycle of country reviews, which begins in 2012. Changes included increasing the period of each cycle from 4 to 4.5 years, as the time allocated for each State’s review was increased from 3 to 3.5 hours. Furthermore, States were encouraged to present mid-term reports on implementation of previous recommendations, and the role in the process of A status National Human Rights Institutions was strengthened.

It is prudent here to briefly understand the difference between the earlier Human Rights Commission, and the new Human Rights Council, as well as the UPR. The most significant difference is the change in membership to more accurately represent the number of States in each region. Asia and Africa now have 13 members, while Latin America has eight, Eastern Europe has six and the Western Group, including Western Europe, North America and Australasia, has seven seats. While this is a fairer system as compared with the Commission, it also means that Asia and Africa combined now have a majority in the Council. As the States with the worst human rights records typically come from Africa and Asia, this majority can, if its members all vote as a bloc, prove to be inimical to progressive human rights outcomes by this body.

The UPR is the main innovation, and the Council has increasingly been making use of Special Sessions to address grave human rights crisis situations. The Council was supposed to rely less on condemnation and more on a cooperative spirit, but this has meant that it has proven weak as concerns some particularly uncooperative States since it was established. The increasing use of Special Sessions is however beginning to address this problem.

The end goal of the UPR is the improvement of the human rights situation in every country and is thus designed to prompt, support, and expand the promotion and protection of human rights on the ground. To achieve this, the UPR involves assessing States’ human rights records and addressing human rights violations wherever they occur. The UPR also aims to provide technical assistance to States and enhance their capacity to deal effectively with human rights challenges and to share best practices in the field of human rights among States and other stakeholders.

B. The review process

Review timeline

All UN Member States will be reviewed every four and a half years. The reviews will take place during the sessions of the UPR Working Group (see below), with three sessions to be held each year. Each session will conduct the review of 14 States. On 21 September 2007, the Human Rights Council adopted a calendar (http://...
The same order will be kept for the second and subsequent cycles of the UPR. A calendar ([http://www2.ohchr.org/SPdocs/UPR/UPR-FullCycleCalendar_2nd.doc](http://www2.ohchr.org/SPdocs/UPR/UPR-FullCycleCalendar_2nd.doc)) concerning the second cycle has now been issued by the UN.

**Who conducts the review?**

The reviews are conducted by the UPR Working Group which consists of the 47 members of the Council; however any UN Member State can take part in the discussion/dialogue with the reviewed States. Each State review is assisted by groups of three States, known as “troikas”, who serve as rapporteurs. The selection of the troikas for each State review is done through a drawing of lots prior to each Working Group session.

Reviews take place through an interactive discussion between the State under review and other UN Member States. This takes place during a meeting of the UPR Working Group. During this discussion any UN Member State can pose questions, comments and/or make recommendations to the States under review. The troikas may group issues or questions to be shared with the State under review to ensure that the interactive dialogue takes place in a smooth and orderly manner. The duration of the review will be three and a half hours for each country in the Working Group.

The documents on which the reviews are based are:

1) Information provided by the State under review, which can take the form of a “national report”;

2) Information contained in the reports of independent human rights experts and groups, known as the Special Procedures ([http://www2.ohchr.org/english/bodies/chr/special/index.htm](http://www2.ohchr.org/english/bodies/chr/special/index.htm)), human rights treaty bodies ([http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx](http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx)), and other UN entities;

3) Information from other stakeholders including non-governmental organizations and national human rights institutions.

**Review outcome**

Following the State review by the Working Group, a report is prepared by the troika with the involvement of the State under review and assistance from the OHCHR. This report, referred to as the “outcome report”, provides a summary of the actual discussion. It therefore consists of the questions, comments and recommendations made by States to the country under review, as well as the responses by the reviewed State.

During the Working Group session, half an hour is allocated to adopt each of the “outcome reports” for the States reviewed in that session. These take place no sooner than 48 hours after the country review. The reviewed
State has the opportunity to make preliminary comments on the recommendations, choosing to either accept or reject them. Both accepted and refused recommendations are included in the report. After the report has been adopted, editorial modifications can be made to the report by States on their own statements, within the following two weeks. The report then has to be adopted at a plenary session of the Human Rights Council. During the plenary session, the State under review can reply to questions and issues that were not sufficiently addressed during the Working Group and respond to recommendations that were raised by States during the review. Time is also allotted to member and observer States who may wish to express their opinion on the outcome of the review and for NGOs and other stakeholders to make general comments.

**Follow up to the review**

The State has the primary responsibility to implement the recommendations contained in the final outcome. The UPR ensures that all countries are accountable for progress or failure in implementing these recommendations. When it comes time for the second review of a State they must provide information on what they have been doing to implement the recommendations made during the 1st review four years earlier. The international community will assist in implementing the recommendations and conclusions regarding capacity-building and technical assistance, in consultation with the country concerned. If necessary, the Council will address cases where States are not cooperating.

The Human Rights Council will decide on the measures it would need to take in case of persistent non-cooperation by a State with the UPR.

**C. Role of states**

States have two responsibilities under the UPR—being reviewed, and conducting the review as part of the Working Group.

**States under review**

The state must first write a national report, which will be used as the basis of the review. States are encouraged to conduct consultations prior to writing. Advance written questions may be submitted to the state by others, which should be responded to during the review.

The review itself takes place in Geneva, Switzerland and lasts for three and a half hours. As mentioned above, the Working Group consists of the 47 members of the HRC, the non-member States and the observers (UN agencies, intergovernmental organizations and civil society). Only States can take the floor.
The State under review has 70 minutes out of the three and a half hours to present its national report, answer the advance written questions, and answer questions coming from the Working Group members during the interactive dialogue. The State can choose freely how to split this time.

The Working Group starts with the presentation by the State under review of the national report, followed by an interactive dialogue with questions by UN member states and answers by the State under review, and at the end, the State’s final conclusions.

During the interactive dialogue, States make recommendations to the State under review on measures to take to improve the human rights situation in the country.

The State is encouraged to provide a response to the recommendations, either accepting them or rejecting them.

This response can be given either orally during the adoption of the Report of the Working Group during the Working Group session, in a document which will become an addendum to its report, or orally during the adoption of the outcome in the session plenary of the Human Rights Council.

After the end of the UPR process, during the Council’s plenary session, a final document containing the Report of the Working Group is adopted. The SuR, between two reviews, has to “implement” the recommendations and improve the human rights situation in the country.

**Working Group**

**Advance written questions**

States can, before the Working Group session, submit questions to the State under review. These written questions have to be transmitted to the State through first the troika and then the Secretariat of the Human Rights Council ten working days before the review.

**Troika**

The Troika has the task of relaying the written questions submitted by other States prior to the review to the Secretariat, which then has ten days to transmit them to the State under review. It consists of three members of the Human Rights Council from different regional groups selected upon a complex system (see [http://www.upr-info.org/-UPR-Process-.html](http://www.upr-info.org/-UPR-Process-.html) for more). According to a President of the Council’s paper (A/HRC/OM/L.1) dated 28 February 2008, their role is only to relay questions and issues without interfering in the debate.

The troika is also in charge of preparing the Report of the Working Group (WG), containing the summary of the proceedings and recommendations by States.
The Office of the High Commissioner for Human Rights (OHCHR) has set up a Trust fund for troika members with limited budget to help them come to Geneva to participate in the review (see http://www.upr-info.org/IMG/pdf/TRUST_20FUND_E.pdf for more information).

**Interactive dialogue**

The review in the Working Group consists of a three and a half hour interactive dialogue between the State under review and United Nations member States. In total, 140 minutes are allocated to the latter. Members of the Human Rights Council have three minutes each and non-members two minutes. All States will be given the floor. If needed, time per speakers will be reduced to two minutes each or the 140 minutes will be divided by the number of speakers.

States are free to praise the State under review’s human rights policies, ask questions, raise concerns and make recommendations. However, in order to assess, at the next review four years later, to which extent the State has implemented human rights, States are encouraged to make recommendations to the State under review.

**Report of the Working Group**

The Report of the Working Group is a factual summary of the review. It is produced by the troika with the help of the Human Rights Council Secretariat and with the full involvement of the SuR and is adopted “ad referendum” by the Working Group two days after the review.

**D. Role of NGOs**

The Universal Periodic Review (UPR) is a state-driven exercise. However, despite the limited role during the interactive dialogue, NGOs have many opportunities to take part and influence the UPR process.

NGO participation can take five different forms:

- Participate in the national consultation held by the State under review
- Send submissions to the Office of the High Commissioner before the review
- Lobby members of the Working Group
- Take the floor during the plenary before the adoption of the outcome
- Monitor the implementation by the State under review of UPR recommendations.

Submitting a report on a country situation is one of the most useful things an NGO can do. This helps the UPR mechanism to deal particularly with the country under review and understand the issues.
Lobbying is another important thing NGOs can do. NGOs can lobby States in order to bring to their attention specific issues and to urge that they be addressed during the interactive dialogue in the form of questions and/or recommendations. Those issues can also be raised through advance questions. Recommendations should be action oriented.

Due to the high number of NGO submissions, not all the listed issues are brought to the attention of members of the Working Group nor included in OHCHR summaries. Therefore, lobbying is a crucial part of the process to make sure that issues of interest are raised during the interactive dialogue. Lobbying can be done both in Geneva and in the State under review.

Oral statements can be made during the plenary, while written statements can be made under any item of the Human Rights Council.

Between the two reviews, NGOs can make the public and others aware of the state’s pledges, monitor these pledges, evaluate them and their implementation.

Questions For Discussion

1. Discuss the strengths and weaknesses of the UPR mechanism. Choose one country and explain how these were visible during its last review.
2. As an NGO, discuss how you could make use of the UPR to address a particular human rights issue in your country.
Lesson 2

This lesson will discuss how best to use the UPR from a civil society perspective.

When thinking about how best to use the UPR, it is necessary to understand how this process can add value and provide new kinds of action and impact for members of civil society who are pursuing the improvement of human rights within a given country context. Some aspects concerning what makes the UPR unique and of use are presented below:

A level playing field: A s has been seen previously, the UPR is a State-led process that aims to level the playing field in how the international human rights system addresses situations in every country across the globe. States with historically poor human rights records are subjected to the same process as States with significantly better human rights records. Very large States with huge populations are accorded the same time as very small States. This egalitarian approach results in all States perceiving this system as being fair. Under other systems, including the now-defunct Commission on Human Rights, States have often complained of being targeted by selective or politically motivated actions and used this to justify a lack of action concerning recommendations made to them concerning even the most grave of rights violations. The UPR is designed to remove this justification for inaction.

A peer review: A nother crucial aspect of the UPR is that it is a peer review among States. This is significant in that it produces recommendations that are made by one State concerning another State. Other mechanisms within the international system, such as the Special Procedures and the Treaty Monitoring Bodies, comprise independent experts. States that are unwilling to cooperate often ignore such experts’ recommendations, or even attempt to discredit such experts personally. The UPR, however, is based on recommendations between States, which are more difficult to simply ignore without a diplomatic cost.

A political system: W hile human rights are enshrined in international legal instruments as well as domestic laws, one of the great barriers to their implementation in reality remains the lack of political will on the part of the relevant authorities at the national level. The UPR is interesting in that it has potential to engender political will by States in ways that other components of the international system do not, as mentioned above. Technical, legalistic analysis of human rights situations is better suited to the Special Procedures or the Treaty Bodies. The UPR is a far more political system, and as such is better at dealing with a few, key issues, so it is important to approach the process strategically.

A new challenge: A dditionally, it must be noted that non-governmental organizations have very little formal space in the UPR process. They can submit reports, but these are summarised by the UN into a single
report, which is not given enough attention during the UPR Working Group’s review process. NGOs can only speak at the end of the UPR process, just before the adoption of the final report, and can therefore not expect to have a significant impact on this outcome. While these aspects are regrettable, this situation does not mean that NGOs cannot play a significant role in the UPR process as a whole. Limitations concerning the public process should not be viewed as just a negative. Keeping the UPR as a peer review between States does have some advantages, as noted in the section above. So far the UPR process has seen a much more positive engagement by States as compared with other processes, such as Treaty Monitoring Body sessions, concerning which many States only submit reports years or even decades late. In many cases, recommendations made by Special Procedures have been completely ignored. So far, the majority of States have reported on time concerning the UPR. The UPR process forces NGOs to make their voices heard indirectly through the States that are participating in the UPR Working Group, which, while a challenge in itself, results in recommendations that the concerned States find much more difficult to ignore. This is the key new challenge and opportunity that the UPR provides for civil society actors.

Although it is still too early to tell, as the second cycle has not yet begun, it can be hoped that States will show greater willingness to implement the recommendations made by peer States. The upcoming second cycle of the UPR, which will include as a major component of its work the assessment of States’ implementation of recommendations made during the first cycle, will be a barometer concerning whether the UPR can be effective in leading to changes in the situation of human rights at the national level.

Opportunities for civil society to engage the UPR effectively: NGOs and other civil society actors have a range of opportunities throughout the entire UPR process to have an impact concerning its relevance and effectiveness, and therefore the possibility of the improvement of human rights at the national level in the State under review.

Prior to the review

Civil society actors, notably those at the national level, have a significant role to play in the lead up to the UPR review, including through the following activities:

1. Evaluation of implementation: Civil society comprises some of the key independent watchdogs concerning human rights and their expertise is vital in ensuring that international efforts, including the UPR, are relevant, realistic and effective. Civil society actors are ideally placed to conduct an assessment of the levels to which the government is fulfilling its obligations under international human rights laws and standards, as well as the level of implementation of recommendations, including those made during the previous UPR cycle. Ideally, this assessment should be continuous and not conducted just prior to the State’s next UPR review. The more precise, factual and complete the assessment, the more useful it can be.
2. **Consultations with the government:** As part of the UPR process, governments are supposed to hold national-level consultations that include civil society actors. Where the situation and security allows, NGOs should engage with the government to make recommendations and urge it to make specific commitments in the State’s report to the UPR. NGOs can also use such consultations to request information from the government concerning its activities and efforts to implement previous recommendations.

3. **Consultations among civil society:** It is important to carry out consultations among civil society groups before the UPR review in order to assess where there may be common ground that could lead to the formation of a coalition of NGOs and the production of a joint report, as well as to discuss the key areas of concern and to decide on how best to burden share. Under the UPR, civil society groups are urged to form coalitions where possible, and are given the incentive of a doubled word allowance for joint reports. One such report on Papua, Indonesia was jointly submitted by the Asian Human Rights Commission, Franciscans International and the Faith Based Network on West Papua: [AHRC-SPR-002-2011-Indonesia.pdf](AHRC-SPR-002-2011-Indonesia.pdf).

4. **Reporting:** The production of reports is a key element, of course, but should not be seen as an end in itself. NGOs that prepare reports and send them off to the UN, but do not back these efforts up by strategic advocacy, are unlikely to see significant impact concerning their efforts.

5. **Strategic advocacy:** In order to have an impact on the State-led UPR process, civil society actors should engage in a range of information and advocacy activities to supplement the production of reports. As can be seen below, most of the advocacy activities can actually be carried out at the national level by civil society actors. This removes the need to go to Geneva in order to be effective in this process, as compared with many other aspects of work with the Human Rights Council, which adds to the value of the UPR to national level actors.

   **Media:** In the first place, the UPR provides an opportunity to engage public opinion concerning human rights, and this can have an impact on the government’s behaviour and willingness to participate effectively in the UPR. It is therefore important to ensure that media attention is given to NGO reports that are submitted to the UN. It is also important to provide commentary in the media concerning the State’s report and any implementation or lack thereof concerning prior recommendations.

   **States:** Alongside national public opinion, the States that participate in the UPR Working Group and are seen as having the potential to play a positive role, should be key targets for strategic advocacy. Civil society actors can use their UPR reports as the basis for meetings with diplomatic missions of such States in their countries. Advocacy should be based on clear, measurable and action-oriented recommendations produced by civil society. Diplomatic missions should be requested to communicate the need for their government to make specific recommendations to the State under review in the upcoming UPR session. Civil society actors can also
follow this up by communicating their key priority recommendations to the relevant State capitals, notably their Ministries of Foreign Affairs or the equivalent, who will likely be tasked with framing that State’s input and recommendations in the UPR process. Finally, it is also possible to write to these States’ Permanent Missions to the United Nations in Geneva, as they will also have a role in participating in the Working Group itself.

Such advocacy should be started several months before the relevant UPR Working Group session, as attempts to get States to include specific recommendations in their interventions take time and cannot be expected to be successful if only carried out in the days before the review. NGOs that have the capacity to go to Geneva to lobby these Permanent Missions can also find this helpful, although this should be done at least several weeks in advance of the State’s review. It must be noted that States can ask questions in advance to the State under review, with these questions being posted on the UN OHCHR’s website and being included in the review itself, giving added motivation to civil society actors to lobby States well in advance of the reviews.

Different States have different areas of interest and may be able to play a more or less human rights friendly role in the UPR, depending on whether they have a presence in the country under review, whether they have positive or negative relations with the State, and whether they have a pro-human rights agenda in the country and at the international level. To establish which States may be likely to intervene during the UPR concerning specific thematic areas of human rights, it can be useful to consult a database of recommendations made during other UPR reviews by each target State, which can be found here: http://www.upr-info.org/database/.

During the review

As has been stated above, civil society actors have a very limited public role to play during the UPR review itself. They cannot take the floor and intervene orally during the review. They can, however, conduct events, such as public discussions and media conferences alongside the review, and these can be of use in highlighting key issues, although it may not be cost effective to travel to Geneva just for such a purpose, notably as the UPR reviews themselves are webcast, allowing civil society actors to follow sessions from the national level. Civil society can assist in ensuring that the wider public is informed about the review taking place. In some countries, civil society organizations have worked to ensure that the review was broadcast on local television channels and followed by programming discussing the review, for example.

Following the review

Once the review has been conducted, civil society actors again have a significant role to play. It is important to disseminate information, including through the media, notably about the recommendations that were made to the State under Review, as well as commentary on which ones the State accepted and is therefore expected to implement, or those that it did not accept. Civil society groups should then begin the process of assessment of the
implementation of these recommendations, and where helpful, communicate with the government concerning its implementation record. In cases where the government is failing to implement recommendations, it is vital to highlight these publicly, as well as to provide such information to the States that made the recommendations in question, as these have a key role to play in ensuring continuing pressure on the government to live up to its promises made during the UPR process. As part of the review of the Human Rights Council’s mechanisms in 2011, States have been encouraged to provide mid-term reports on their implementation of UPR recommendations. Civil society groups have an important role to play in urging the government to produce a mid-term report on the one hand, and on the other, can also produce mid-term assessments of their own. This keeps the discussion and momentum going throughout the four and a half year cycle, rather than limiting the utility of the UPR to the few weeks prior to and following the review. Such assessments of implementation then feed into the subsequent review cycle, and the process begins again.

Questions For Discussion

1. Discuss how you would conduct effective advocacy before, during and after the UPR, including through the media, civil society partnerships and with other states.
2. Discuss how you would go about evaluating the level of implementation of recommendations made to a State during the first cycle, and give examples concerning specific examples.